

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

DECISION OF THE BOARD

*In the Matter of the Petition for Redetermination under the Sales and Use Tax Law of
GENERAL ATOMICS Petitioner*

Appearances:

<i>For Petitioner:</i>	Janet Pass Accountant
<i>For Appeals Section, Legal Division:</i>	Susan M. Wengel Assistant Chief Counsel
<i>For Sales and Use Tax Department:</i>	David Levine Supervising Tax Counsel
	Sophia Chung Tax Counsel

MEMORANDUM OPINION

This opinion considers the merits of a petition for redetermination in the amount of \$345,749.57 in tax for the period April 1, 1989, through June 30, 1992. The Board heard this matter on September 11, 1996, and took it under consideration. On November 21, 1996, on a Final Action Calendar, the Board granted the petition and requested the Appeals Section to prepare a Memorandum Opinion.

The San Diego Supercomputer Center (SDSC), a division of petitioner, operates a supercomputer center for the National Science Foundation (NSF). SDSC is located at the San Diego University of California campus. NSF awarded SDSC a fee bearing grant under which SDSC would implement a federal plan to connect various California state universities to the NSF's National Supercomputer Access Network. Under the program, SDSC acquires some of the equipment required for the networking program.

Petitioner acquires the computer equipment extax from California vendors with grant funds provided to petitioner by the U.S. Government. Petitioner's purchase orders specify that the equipment is to be delivered directly to the California universities and colleges. Title vests in the institutions.

The NSF Grant General Conditions, Article 7, "Equipment" which provides for acquisitions of equipment with NSF grant funds, reads as follows:

"Title to equipment purchased or fabricated with NSF grant funds for use by a college or university or other nonprofit organization shall vest in that institution, with the understanding that such equipment (or a suitable replacement obtained as a trade-in) shall remain in use for the specific project for which it was obtained.

“Title to equipment purchased or fabricated with NSF grant funds for use by the grantee organization shall vest in the Government. Such equipment shall be managed in accordance with the NSF Grant Policy Manual.”

Petitioner stated that it only acted as a conduit for the government with respect to the equipment acquisitions as title to the equipment remained with the U.S. Government. Petitioner stated that title to the property passed to the educational institution directly from the U. S. Government even when the equipment is first acquired by a commercial enterprise such as petitioner. Petitioner does not hold title to the equipment and makes no charge to the California institutions.

OPINION

Revenue and Taxation Code section 6381(a) provides that there are exempted from the sales taxes the gross receipts from the sale of any tangible personal property to the U.S. Government, its unincorporated agencies, and instrumentalities. Therefore, when petitioner acquires the computer equipment extax, its acquisitions were made on behalf of the U.S. Government. By contract, petitioner could not hold title to the computer equipment and the funds for the acquisitions were provided by the U.S. Government. We conclude that in these particular transactions, title passed from the vendor to the U.S. Government and from the U.S. Government directly to the universities. As petitioner never held title to the equipment, petitioner has not incurred a tax liability.

Adopted at Sacramento, California, this 8th day of May, 1997.

Ernest J. Dronenburg, Jr., Chairman
Johan Klehs, Member
Dean F. Andal, Member
Rex Halverson*, Member
John Chiang**, Member

Attested by E. L. Sorensen, Jr., Executive Director

* For Kathleen Connell, per Government Code section 7.9.

** Acting Member, 4th District.